

6779

I N S E N A T E

February 22, 2016

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the education law, in relation to electronic prescriptions

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions 3, 4 and 5 of section 281 of the public health
2 law, subdivision 3 as amended by chapter 13 of the laws of 2015, subdivi-
3 visions 4 and 5 as added by section 2 of part B of chapter 447 of the
4 laws of 2012, are amended and a new subdivision 7 is added to read as
5 follows:
6 3. On or before December thirty-first, two thousand twelve, the
7 commissioner shall promulgate regulations, in consultation with the
8 commissioner of education, establishing standards for electronic
9 prescriptions. Notwithstanding any other provision of this section or
10 any other law to the contrary, effective three years subsequent to the
11 date on which such regulations are promulgated, no person shall issue
12 any prescription in this state unless such prescription is made by elec-
13 tronic prescription from the person issuing the prescription to a phar-
14 macy in accordance with such regulatory standards, except for
15 prescriptions: (a) issued by veterinarians; (b) issued in circumstances
16 where electronic prescribing is not available due to temporary techno-
17 logical or electrical failure, as set forth in regulation; (c) issued by
18 practitioners who have received a waiver or a renewal thereof for a
19 specified period determined by the commissioner, not to exceed one year,
20 from the requirement to use electronic prescribing, pursuant to a proc-
21 ess established in regulation by the commissioner, in consultation with
22 the commissioner of education, due to economic hardship, technological
23 limitations that are not reasonably within the control of the practi-
24 tioner, or other exceptional circumstance demonstrated by the practi-
25 tioner; (d) issued by a practitioner under circumstances where, notwith-
26 standing the practitioner's present ability to make an electronic
27 prescription as required by this subdivision, such practitioner reason-
28 ably determines that it would be impractical for the patient to obtain

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD14195-05-6

1 substances prescribed by electronic prescription in a timely manner, and
2 such delay would adversely impact the patient's medical condition,
3 provided that if such prescription is for a controlled substance, the
4 quantity of controlled substances does not exceed a five day supply if
5 the controlled substance were used in accordance with the directions for
6 use; [or] (e) issued by a practitioner to be dispensed by a pharmacy
7 located outside the state, as set forth in regulation; OR (F) ISSUED BY
8 A PRACTITIONER WHO HAS MADE A CERTIFICATION TO THE DEPARTMENT UNDER
9 SUBDIVISION SEVEN OF THIS SECTION.

10 4. In the case of a prescription for a controlled substance issued by
11 a practitioner under paragraph (b) of subdivision three of this section,
12 the practitioner shall [file information about the issuance of such
13 prescription with the department as soon as practicable, as set forth in
14 regulation] MAINTAIN INFORMATION IN THEIR RECORDS REGARDING THE ISSUANCE
15 OF SUCH PRESCRIPTION.

16 5. In the case of a prescription for a controlled substance issued by
17 a practitioner under paragraph (d) or (e) of subdivision three of this
18 section, the practitioner shall, upon issuing such prescription, [file
19 information about the issuance of such prescription with the department
20 by electronic means, as set forth in regulation] MAINTAIN INFORMATION IN
21 THEIR RECORDS REGARDING THE ISSUANCE OF SUCH PRESCRIPTION.

22 7. A PRACTITIONER SHALL NOT BE REQUIRED TO ISSUE PRESCRIPTIONS ELEC-
23 TRONICALLY AS OTHERWISE REQUIRED BY THIS SECTION IF HE OR SHE CERTIFIES
24 TO THE DEPARTMENT THAT HE OR SHE WILL NOT ISSUE MORE THAN TWENTY-FIVE
25 PRESCRIPTIONS OVER EACH SUCCESSIVE TWELVE MONTH PERIOD FOLLOWING THE
26 DATE OF THE CERTIFICATION. A PRACTITIONER MAY REVOKE SUCH CERTIFICATION
27 AT ANY TIME IF THEY INTEND TO ISSUE MORE THAN TWENTY-FIVE PRESCRIPTIONS
28 OVER A TWELVE MONTH PERIOD FOLLOWING THE DATE OF CERTIFICATION. A PRAC-
29 TITIONER MAY MAKE A CERTIFICATION UNDER THIS SUBDIVISION REGARDLESS OF
30 WHETHER HE OR SHE HAS PREVIOUSLY RECEIVED A WAIVER UNDER PARAGRAPH (C)
31 OF SUBDIVISION THREE OF THIS SECTION.

32 S 2. Subdivisions 10, 11 and 12 of section 6810 of the education law,
33 subdivision 10 as amended by chapter 13 of the laws of 2015, subdivi-
34 sions 11 and 12 as added by section 3 of part B of chapter 447 of the
35 laws of 2012, are amended and a new subdivision 15 is added to read as
36 follows:

37 10. Notwithstanding any other provision of this section or any other
38 law to the contrary, effective three years subsequent to the date on
39 which regulations establishing standards for electronic prescriptions
40 are promulgated by the commissioner of health, in consultation with the
41 commissioner pursuant to subdivision three of section two hundred eight-
42 y-one of the public health law, no practitioner shall issue any
43 prescription in this state, unless such prescription is made by elec-
44 tronic prescription from the practitioner to a pharmacy, except for
45 prescriptions: (a) issued by veterinarians; (b) issued or dispensed in
46 circumstances where electronic prescribing is not available due to
47 temporary technological or electrical failure, as set forth in regu-
48 lation; (c) issued by practitioners who have received a waiver or a
49 renewal thereof for a specified period determined by the commissioner of
50 health, not to exceed one year, from the requirement to use electronic
51 prescribing, pursuant to a process established in regulation by the
52 commissioner of health, in consultation with the commissioner due to
53 economic hardship, technological limitations that are not reasonably
54 within the control of the practitioner, or other exceptional circum-
55 stance demonstrated by the practitioner; (d) issued by a practitioner
56 under circumstances where, notwithstanding the practitioner's present

1 ability to make an electronic prescription as required by this subdivi-
2 sion, such practitioner reasonably determines that it would be impracti-
3 cal for the patient to obtain substances prescribed by electronic
4 prescription in a timely manner, and such delay would adversely impact
5 the patient's medical condition, provided that if such prescription is
6 for a controlled substance, the quantity that does not exceed a five day
7 supply if the controlled substance was used in accordance with the
8 directions for use; [or] (e) issued by a practitioner to be dispensed by
9 a pharmacy located outside the state, as set forth in regulation; OR (F)
10 ISSUED AS AN ORAL PRESCRIPTION UNDER SUBDIVISION FIFTEEN OF THIS
11 SECTION.

12 11. In the case of a prescription issued by a practitioner under para-
13 graph (b) of subdivision ten of this section, the practitioner shall be
14 required to [file information about the issuance of such prescription
15 with the department of health as soon as practicable, as set forth in
16 regulation] MAINTAIN INFORMATION IN THEIR RECORDS REGARDING THE ISSUANCE
17 OF SUCH PRESCRIPTION.

18 12. In the case of a prescription issued by a practitioner under para-
19 graph (d) or (e) of subdivision ten of this section, the practitioner
20 shall, upon issuing such prescription, [file information about the issu-
21 ance of such prescription with the department of health by electronic
22 means, as set forth in regulation] MAINTAIN INFORMATION IN THEIR RECORDS
23 REGARDING THE ISSUANCE OF SUCH PRESCRIPTION.

24 15. A PRACTITIONER SHALL NOT BE REQUIRED TO ISSUE PRESCRIPTIONS ELEC-
25 TRONICALLY AS OTHERWISE REQUIRED BY THIS SECTION IF HE OR SHE CERTIFIES
26 TO THE DEPARTMENT THAT HE OR SHE WILL NOT ISSUE MORE THAN TWENTY-FIVE
27 PRESCRIPTIONS OVER EACH SUCCESSIVE TWELVE MONTH PERIOD FOLLOWING THE
28 DATE OF THE CERTIFICATION. A PRACTITIONER MAY REVOKE SUCH CERTIFICATION
29 AT ANY TIME IF THEY INTEND TO ISSUE MORE THAN TWENTY-FIVE PRESCRIPTIONS
30 OVER A TWELVE MONTH PERIOD FOLLOWING THE DATE OF CERTIFICATION. A PRAC-
31 TITIONER MAY MAKE A CERTIFICATION UNDER THIS SUBDIVISION REGARDLESS OF
32 WHETHER HE OR SHE HAS PREVIOUSLY RECEIVED A WAIVER UNDER PARAGRAPH (C)
33 OF SUBDIVISION TEN OF THIS SECTION.

34 S 3. This act shall take effect immediately.